1943

Department of Revenue

OFFICE Board of Revenue Madras

STATION SALEM.

No. Mis 155(S)

Dated 15.2.43

Telegram

Seen by Member

P403/43

15 FEB 19

(SUBJECT.)

Suits pauper (S. Kanara) Mangalore D.M. Court ... Court fee - awarded to Govt u/s 35(5)/39 - Standing Order No 49/42 - Defence - Sanctioned

URGENT.

Ref.C.No.10029-42-A3. South Kanara Collector's Office,
Mangalore, dated: 24th Jan.1943.

From

M. Karamatullah Esq., I.C.S.,
Collector of South Kanara.

To

The Secretary to the Board of Revenue,
Land Revenue & Irrigation, MADRAS.

Sir,

SUITS - Mangalore Dt.Munsiff's Court O.S.No.537/42 - Court-fee awarded to Government in O.S.No.355/1939 - Recovery in R.E.P.No.49/42 - Refund - Sanction of defence.- Report submitted.

I enclose a copy of the plaint filed in the above suit. The suit is for a declaration that the decree obtained by the first defendant in O.S.No.355/1939 dated 31-10-1939, on the file of the Dt. Munsiff's Court, Puttur, is void and in-operative against the assets of the plaintiff's family and for the recovery of Rs 96-11-0, with -- interest, being the amount deposited by the plaintiff in R.E.P. 49/42 on the file of the Mangalore Dt.Munsiff's court, towards the court-fee awarded to Government in O.S.No.355/1939 and also for other incidental reliefs.

2. A brief history of the case is set forth below. The first and the second defendants in the present suit were the plaintiff and the defendant respectively in O.S.No.355/1939 on the file of the Dt. Munsiff's court, Puttur. The suit O.S.No.355/1939 was one in forma pauperis filed by the plaintiff in that suit. As she was found to be really a pauper, her petition to sue in forma pauperis was not opposed by the Government. The suit was finally decreed in her --- favour. It was also decreed that the plaintiff in the suit should pay Government Rs 76-7-0 on account of the court-fee due to Government on plaintiff's plaint. It is the execution of this decree by the Government that has given rise to the present suit.

3. The plaintiff in O.S.No.355/1939 was a pauper and was not -- able to pay the court fee awarded to Government. As the Court fee awarded to Government was a first charge on the subject matter of the suit, under Order XXXIII, Rule 10 of the First Schedule to Civil --- Procedure Code, the Government were entitled to execute the decree -- passed in favour of the plaintiff against the defendant in the said - suit. Steps were, therefore, taken to attach and bring to sale the immoveable property of the defendant's family for the recovery of the court fee due to Government.

4. As it was found that the property S.No.55/1 of Koraddy Village of Kasargod Taluk, proposed to be attached, was situated --- within the jurisdiction of Mangalore Dt.Munsiff's Court, the decree in O.S.No.355/39 was caused to be transferred from Puttur Dt.Munsif's Court to Mangalore Dt.Munsiff's Court. Execution proceedings were accordingly instituted in R.E.P.No.49/1942 on the file of the Dt.--- Munsiff's Court, Mangalore, and the aforesaid property was attached and finally posted to 28-9-1942 for sale. As the plaintiff in the present suit deposited Rs 96-11-0 in the court towards the court fee and the costs of the execution due to the Government, the sale was not held and the decree in O.S.No.355/1939 was finally satisfied -- as against Government.

5. While the execution petition in R.E.P.No.49/1942 was pending in court, the plaintiff in the present suit had sent a suit-notice in the matter which stands filed at page 201 and 202 of.of this office file D.Dis.No.5685-41. The decree in O.S.No.355/1939 was against family assets. The Government Pleader, Mangalore, in his letter No.A.570/42, dated 21-8-1942, stated that a decree against an ejman was valid and binding on the family and could be executed against all the family properties, so long as it was not set aside. On those grounds the suit-notice received from the plaintiff was - finally recorded.

6. The main allegation contained in paras 3(a) to (g) of the plaint in the present suit is that the decree in O.S.No.355/1939 was fraudulent and collusive. Government are not aware of any ---- fraud or collusion as alleged in these paras. The plaintiff's -- further allegations that the decree in O.S.No.355/1939 was void and ineffectual as against her family and that the property was wrongly

brought to sale are also untenable in view of the fact that the property was sought to be sold in execution of the court decree against family assets.

7. I consulted the Government Pleader, Mangalore in the matter. In his letter Ref.No.A.47/1943 dated 18-1-1943 (copy enclosed), he has given his opinion that the suit is formally maintainable and that it has to be resisted. I agree with him and accordingly recommend that the defence of the suit may be sanc-tioned. I enclose a draft of the written statement proposed to be filed in the suit on behalf of the Government. It was prepared in my office, but was revised by the Government Pleader, Mangalore and further scrutinised in the office. It may be approved.

8. Though the plaint in the suit is dated 28-10-1942, I received the summons and a copy of the plaint only on 22-12-1942. The suit stands posted to 26-3-1943 for filing the written state-ments of the defendants.

9. I enclose the documents and records noted below for reference and return.

(1) This office file L.Dis.No.4628-39. — (D)
(2) D.Dis.No.5685-41. — (E)
(3) Copy of the plaint.
(4) Copy of the draft written statement.

For-Collector.

26.1.43

In the Court of the District Munsiff of Mangalore.

Original Suit No.537/1942.

Between

Deyyakku Hengsu..... .... Plaintiff.

and

1. Kashi Amma.
2. Thimmappa Mada. .... Defendants.
3. The Province of Madras

Plaint under Section 26 Order 7 Rules 1 to 7 of Civil Procedure Code.

The plaintiff abovenamed begs to state as follows:

I. That she is the daughter of Boggu Mada, Bunt, aged about 48 years, landholder, residing in Vorkady Kasba village, Kasaragod Taluk, This is the address for service of all notices and processes.

II. That the 1st defendant is the widow of Venkappayya Bhatta, Brahmin, age not known, residing at Pervaru in Kavalamudur village, Mangalore Taluk. The 2nd defendant is the son of Boggu Mada, Bunt, aged about years, landholder, residing in Vorkady Kasba village, Kasaragod Taluk. The 3rd defendant is the Province of Madras, represented by the Collector of South Kanara.

III(a) The Plaintiff and the 2nd defendant are members of an Aliyasanthana family, owning immoveable properties in Vorkady Kasba and other villages of Kasaragod Taluk.

(b) The plaintiff has come to know recently that the 2nd defendant has suffered a collusive decree in O.S.No.355 of 1939 on the file of the District Munsif's Court, Puttur. On enquiry she learnt that the said suit was filed by the 1st defendant on a promissory note alleged to have been executed by the 2nd defendant on 31-5-1936, for Rs.497-15-0 in favour of one Gangamma Hengsu, from whom the 1st defendant appears to have obtained an assignment on 25-12-1939.

(c) The pronote alleged to have been executed by the 2nd defendant on 31-5-1936 was a collusive one and it was not executed for and on behalf of the family of 2nd defendant. No claim can legally be based against the family assets on the strength of the said pronote.

(d) The family of plaintiff and the 2nd defendant has no legal necessity to incur any debt. Even if the said pronote was supported by consideration to any extent, the said consideration was not borrowed for any needs of the family nor was it ever utilised for any purpose binding on the family. The promissee or her assignee namely the 2nd defendant herein have no right whatsoever to hold the family liable or claim a decree against the family assets for the recovery of the any sum said to be due thereunder.

(e) Gangamma Hengsu as well as her relations were fully aware that the 2nd defendant was only a junior member of the family and as such was not competent to bind the family by contracting debts. Moreover the 1st defendant being admittedly an endorsee of the said pronote was not entitled to claim any relief against the family assets on the strength of the said pronote.

(f) Notwithstanding the above facts the aforementioned suit namely O.S.No.355 of 1939 was filed on the basis of the said pronote in the court of the District Munsif of Puttur within the jurisdiction of which neither the plaintiff nor other members of the family reside. The suit was deliberately filed in the said court with the object of keeping the plaintiff and the other members of the family out of knowledge of all proceedings relating thereto. The endorsement in favour of the 1st defendant was brought about with the sole object of

instituting the suit in the District Munsif's Court, Puttur The endorsement was collusive and was without consideration. The 1st defendant had even no means to pay consideration therefor. It was only a part of the scheme of fraud resorted to at the instance of the 2nd defendant to defraud the family.

(g) In the suit so filed before the District Munsiff of Puttur, the 2nd Defendant remained exparte. He did not raise any plea to protect the interest of the family. Though the allegations made in the plaint therein were false and though there was no evidence as against the family still a decree was passed against the assets of the family owing to gross negligence and fraud on the part of the 2nd defendant. The said decree is not valid and binding against the family. It is vitiated by fraud and collusion. The 2nd defendant ~~had wilfully~~ was not competent to represent the family. The 1st defendant had wilfully abstained from impleading the mother of the plaintiff who was then the seniormost member of the family as well as other members. The 1st defendant is therefore not entitled to recover any amount in execution of the said decree from the plaintiff's family.

(h) That subsequent to the passing of the said decree the 3rd defendant appears to have attached the same and has put up portion of the family properties to sale in R.E.P.49/1942 on the file of this court. Having come to know of this the plaintiff sent a notice dated 14-8-1942 requesting the 3rd defendant not to proceed against the properties that ~~known~~ were attached and sought to be sold in the above execution. The plaintiff has also set out all the facts relating to the fraud and required the 3rd defendant not to proceed with the ~~fraud~~ sale of the properties, as the same are not liable to be sold in execution of the said decree. Despite the said notice the 3rd defendant sought to sell the properties wrongfully. In order to avert the loss and to protect the interest of herself and of her family the plaintiff deposited into court a sum of Rs.96-11-0 on 24-9-1942 and got the sale averted. The deposit was made by the plaintiff under protest and to avoid the illegal action of the 3rd defendant. As the decree under Execution is void and ineffectual as against the family and that the same is not valid and binding against the plaintiff and her family the 3rd defendant was not entitled to sell any properties belonging to the family in Execution thereof. The properties sought to be sold in R.E.P.No.49/1942 are not liable to be sold in Execution. Hence the plaintiff is entitled to obtain the refund of Rs.96-11-0 with interest at 6 percent in the circumstances mentioned above.

(i) The plaintiff apprehends that the 1st defendant may also apply for the Execution of the aforesaid decree against the family assets, which she has no right to do. Plaintiff is therefore also constrained to pray for an injunction to restrain the 1st defendant permanently from proceedings agsinst the family assets in execution of the aforesaid decree.

(j) The notice required under law to the 3rd defendant before institution of the suit had been given on 14-8-1942.

(k) The cause of action arose on 14-8-1942 and 24-9-42 and subsequently in Mangalore within the jurisdiction of this court where the properties belonging to the family of the plaintiff were wrongfully put up for sale in R.E.P.49/42 on the file of this court, and in Vorkady Kasba village within the jurisdiction of this court.

IV. The plaintiff values the relief at Rs.827-12-6 for the purpose of jurisdiction and a court fee of Rs.93-7-0 is paid under Section 7 Clause (i) and (c) of Court Fees Act.

V. The plaintiff therefore prays for a decree and judgment against the defendants for the following reliefs:-

(a) For a declaration that the decree obtained by the 1st defendant in O.S.No.355 of 1939 dated 31-10-1939 on the file of the District Munsif of Puttur, is void and inoperative against the assets of the plaintif's family, as per order of the court dated 2-11-42, this relief is valued at the amount due under the decree as on date of suit.) Rs.720-10-6.
For the recovery of Rs.96-11-0 with interest from 24-9-1942 at 6% upto date. Rs. 97- 2-0.

Court fee is paid on the consequential relief.

(b) For future interest.

(c) For a permanent injunction against the 1st defendant restraining her from executing the decree in O.S.No.355/39 on the file of Dt. Munsif's Court of Puttur against the plaintiff's family and assets.
This is valued at Rs. 10- 0-0

(d) For costs with interest thereon at 6% uptodate.

(e) For such other and further reliefs as the Court deems fit to grant under the circumstances of the case.

Rs.827-12-6.

Mangalore,
28-10-1942.

Plaintiff.

P.T.O.

Advocate for Plaintiff.

I, the abovenamed plaintiff do hereby declare that the facts stated above are all true to the best of my knowledge.

Mangalore,
28-10-1942. Plaintiff.

List of documents filed.

17-8-1942. Postal acknowledgments from the Collector of South Kanara, representing the Province of Madras.

Mangalore,
28-10-1942. (Sd.) x x x
Advocate for Plaintiff.

True Copy

for Collector.

Read
26.1.43

Copy of letter Ref.No.A-47/43, dated 18-1-1943 from the Government Pleader, Mangalore to the Collector of South Kanara, Mangalore.

Suits - Mangalore Dt.Munsiff's Court - O.S.No.537/42 - Court Fee - Recovery - R.E.P.No.49/1942 - Legal opinion.

Your Ref.A-3/10029-42 dated 15th January 1943.

The suit is formally maintainable in law. The suit has to be resisted. The draft written statement is sent herewith. all the enclosures are returned.

(1) Current file C.No.10029-42 (PP.1-14).
(2) Your Office file D.Dis.No.5685-41.
(3) Your office file L.Dis.No.4628-39

/True copy/

For Collector.

26.1.43

In the Court of the District Munsiff of Mangalore.

O.S.No. 537/1942.

Between:-

Doyyakku Hengsu. Plaintiff.

and

Kashi Amma and 2 others... Defendants.

Written statement of Defendant No.3 under Order VIII, Rule 1 Cr.P.C.

his defendant begs to state as follows:-

1. The suit as against this defendant is frivolous and not maintainable in law.

2. This defendant is not aware of any fraud or collusion as alleged in plaint paras III(a) to (g); even if the allegations be true, the decree in favour of this defendant cannot be set --- aside on that account.

3. O.S.No.355 of 1939 on the file of the Puttur Munsiff's Court was a pauper suit, in which the court passed the decree for court fee of Rs 76-7-0 as required by law. In the absence of any allegation of fraud or collusion as between this Defendant and any other party to that suit in obtaining of that decree in favour of this defendant the suit is not sustainable as against this --- defendant and is liable to be dismissed with costs.

4. This defendant admits having sought to execute that decree as against the family assets of the present 2nd defendant which the Government were quite entitled to under the terms of the --- decree. On the plaintiff's depositing the decree amount and -- costs amounting to Rs 96-11-0, the Government drew the amount in full satisfaction of the decree.

5. This defendant submits that the allegations made to --- avoid the decree are made with ulterior purposes, and that as the Government cannot possibly be a party to the fraud, no grounds exist to set aside the decree for court fee in its favour, or to order refund of the amount drawn in satisfaction of that decree.

Prays therefore that the suit may be dismissed with costs.

South Kanara Collector's Office,
Mangalore, dated: 24- 1 -1943.

For Collector.

15.2

Suits - pauper - [S. Kumara] - mangalore D.M. Court
O.S. No 537/42 - Certificate awarded to Certain O.P. No 255
- Recovery of R.E.P. No 49/42 - Defence sanctioned.

p. 403/43

Res: Mis No 155 (S) dt. 18.2.43

The Bd sanctions the defence of the above suit as advised by the D.W.S' submitted vide R.O. No ~~[illegible]~~

To the Collr of S. Kanara
(with 2 files received by RP)

Date of hearing 16.3.43

Noted

Suit - Cooper [S. Kanara] - Mangalore D'Munsiff's Court - OS No 5-37/42 - Claim awarded to Govt in OS No 355/34 - Recovery in ~~S.R.~~ R.E.B No 49/42 - Sanction of Defence

P403/43 - From Coll'r of S. Kanara, letter Ref C, 100.29-42-A3 dt 24.1.43

To. J.S

The letter from the Collector of S. Kanara at ft 1-2 C is for perusal. It is self contained & gives a detailed history of the case

2/. The G.P Mangalore who was consulted by the Collector is of opinion that the suit is formally maintainable & that it has to be resisted. The D.W.S prepared with the concurrence of the G.P meets all the allegations in the plaint. The defence of the suit may be sanctioned & the draft written statt may be ~~approved~~.

Approved

Approved
5.2.43 7/2/43

To J.S.

Draft submitted at page 9CF

12/2/43

ASSISTANT SECRETARY.
12 FEB 1943

ASSISTANT SECRETARY.
15 FEB 1943

B.P.No. Mis 155 (2)
Dated 15.2.63.

Single Member
~~Two Members~~
~~Full Board~~.

I-A	D.D.S and L.R.	Asst. Secretary. L.R.	Irrgn	C.T	Ex-cise	J.S.	Secy	M M M M

Mention for Excise Help Rec

Open file seen by
Final draft seen by
Now circulated to

Initials.

Secretary. AF
Jt. Secretary
A.S.(I.R.) 16/2
A.S. (Irrign) 16/2

Passed for record.
A.S.(Excise)
A.S.(Comml.Taxes)
D.D.S. & L. R.
L.A.

Note: Entries not required to be scored out.